

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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HALO ELECTRONICS, INC.,

Plaintiff,

v.

PULSE ELECTRONICS, INC. and  
PULSE ELECTRONICS  
CORPORATION,

Defendants.

2:07-cv-00331-PMP-PAL

**ORDER**

Presently before the Court is Defendants Pulse Electronics, Inc. and Pulse Electronics Corporation's (collectively "Pulse") Renewed Motion for Judgment as a Matter of Law (Doc. #535), filed on June 25, 2013. Plaintiff Halo Electronics, Inc. ("Halo") filed a Response (Doc. #545) on July 9, 2013. Pulse filed a Reply (Doc. #550) on July 16, 2013.

Also before the Court is Pulse's Motion for a New Trial (Doc. #534), filed on June 25, 2013. Halo filed a Response (Doc. #546) on July 9, 2013. Pulse filed a Reply (Doc. #549) on July 16, 2013.

The parties are familiar with the facts of this case and the Court will not repeat them here except as necessary. This patent infringement case was tried before a jury beginning on November 6, 2012. (Mins. of Proceedings (Doc. #427).) At the close of Halo's case-in-chief, Pulse filed a Motion for Judgment as a Matter of Law on the issues of infringement, induced infringement, and willfulness. (Def.'s Mot. for J. as a Matter of Law

1 of Non-Infringement, No Induced Infringement, and No Willfulness (Doc. #444); Jury Trial  
2 Tr. - Day 6 (Doc. #465) at 5-6, 15-16.)

3 On November 26, 2012, the jury returned a verdict in Halo's favor. (Jury Verdict  
4 (Doc. #482).) The Court denied Pulse's Motion for Judgment as a Matter of Law on  
5 March 11, 2013. (Order (Doc. #519).) The Court entered Findings of Fact and Conclusions  
6 of Law on the remaining legal and equitable issues on May 28, 2013. (Order (Doc. #522).)  
7 Following entry of the Court's Findings of Fact and Conclusions of Law, the Court entered  
8 Judgment in Halo's favor. (J. (Doc. #523).) The Court also granted Halo a permanent  
9 injunction against Pulse. (Order (Doc. #528); Permanent Inj. (Doc. #529).)

10 Pulse filed a Notice of Appeal, which the United States Court of Appeals for the  
11 Federal Circuit deactivated upon Pulse filing its post-judgment Motions that are the subject  
12 of this Order. (Notice of Appeal (Doc. #531); Order (Doc. #541); Notice to Originating  
13 Tribunal (Doc. #542).) The Court has stayed enforcement of the permanent injunction until  
14 October 15, 2013. (Order (Doc. #551).) The Court also has stayed enforcement of the  
15 Judgment until the Court rules on Pulse's Motions that are the subject of this Order. (Order  
16 (Doc. #551).)

17 **I. RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW (DOC. #535)**

18 Pulse argues that the Court should find as a matter of law that the asserted patent  
19 claims are invalid for obviousness. Pulse further argues the jury's verdict that Pulse's  
20 accused products infringe the asserted claims that include a standoff element is not  
21 supported by the evidence because the accused products do not meet the standoff element's  
22 definition. Finally, Pulse argues no reasonable jury could find that Pulse induced  
23 infringement.

24 Halo responds that the Court should deny Pulse's Motion as to obviousness because  
25 Pulse failed to move for judgment as a matter of law on obviousness at the close of  
26 evidence. Alternatively, Halo argues this Court should adhere to its prior determination that

1 Halo's asserted claims are not invalid due to obviousness. Halo also argues the Court  
2 should uphold its prior ruling that the evidence supports the jury's verdict on infringement  
3 of the standoff claims and induced infringement. Halo argues that the jury's infringement  
4 findings on the standoff claims and on induced infringement are supported by substantial  
5 evidence in the record.

6 Federal Rule of Civil Procedure 50(a) allows a party to move for judgment as a matter  
7 of law "at any time before the case is submitted to the jury." Under Rule 50(b), a party who  
8 has filed a motion under Rule 50(a) may file a renewed motion for judgment as a matter of  
9 law after judgment is entered. Although this is a patent case, this Court applies the United  
10 States Court of Appeals for the Ninth Circuit's law in deciding a motion for judgment as a  
11 matter of law. See SynQor, Inc. v. Artesyn Tech., Inc., 709 F.3d 1365, 1373 (Fed. Cir.  
12 2013) (stating the Federal Circuit "reviews the grant or denial of a motion for [judgment as  
13 a matter of law] under the law of the regional circuit").

14 Courts "review a jury's verdict for substantial evidence in ruling on a properly made  
15 motion under Rule 50(b)." E.E.O.C. v. Go Daddy Software, Inc., 581 F.3d 951, 961 (9th  
16 Cir. 2009). "Substantial evidence is evidence adequate to support the jury's conclusion,  
17 even if it is also possible to draw a contrary conclusion from the same evidence." Wallace  
18 v. City of San Diego, 479 F.3d 616, 624 (9th Cir. 2007) (quotation omitted). "While the  
19 court must review the entire evidentiary record, it must disregard all evidence favorable to  
20 the moving party that the jury is not required to believe." Id. "The evidence must be  
21 viewed in the light most favorable to the nonmoving party, and all reasonable inferences  
22 must be drawn in favor of that party." Id. "A district court may set aside a jury verdict and  
23 grant judgment as a matter of law only if, under the governing law, there can be but one  
24 reasonable conclusion as to the verdict." MHC Fin. Ltd. P'ship v. City of San Rafael, 714  
25 F.3d 1118, 1131-32 (9th Cir. 2013).

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1           **A. Obviousness**

2           Pulse argues that even assuming all contested facts are decided in Halo's favor, the  
3 prior art Pulse presented demonstrates by clear and convincing evidence that the asserted  
4 claims are invalid. Pulse argues that all claim elements are present in the prior art. Pulse  
5 further argues that it was an error to use a Pulse engineer's statement that he did not see  
6 how the prior art was relevant to Halo's invention as evidence that the prior art teaches  
7 away from the combination of elements that make up Halo's invention. Pulse also contends  
8 the prior art Pulse presented at trial was not before the United States Patent and Trademark  
9 Office ("PTO"), and was different than the prior art that was before the PTO. Pulse finally  
10 argues that Halo's secondary evidence of obviousness cannot overcome Pulse's prima facie  
11 evidence of obviousness.

12           Halo responds that Pulse did not move under Rule 50(a) for judgment as a matter of  
13 law on obviousness, and therefore the Court cannot entertain Pulse's Rule 50(b) Motion on  
14 obviousness. Halo further argues that Pulse's Motion on obviousness actually is a motion  
15 for reconsideration of the Court's finding that the asserted patent claims are not invalid for  
16 obviousness. Halo argues that the jury is presumed to have resolved all factual disputes in  
17 Halo's favor, and therefore the jury is presumed to have found that the standoff element was  
18 not present in the prior art, and that the Western Electric and Rockwell prior art Pulse  
19 presented at trial did not contain many of the claimed elements. Halo also argues that the  
20 jury resolved in Halo's favor the disputes of whether the prior art taught away from Halo's  
21 claimed invention and whether the prior art not before the PTO was similar to the prior art  
22 before the PTO. Halo finally argues that the underlying factual issues for the objective  
23 indicia of obviousness must be resolved in Halo's favor, and the objective indicia of  
24 obviousness show the asserted claims were not invalid for obviousness.

25           Pulse replies that the Ninth Circuit has adopted a liberal view of what constitutes a  
26 sufficient pre-verdict motion under Rule 50(a) and therefore the Court should treat the case

1 as though Pulse filed a pre-verdict motion. Pulse further argues that Halo has not asserted it  
2 will be prejudiced by Pulse's failure to file a pre-verdict motion, and therefore the Court  
3 should entertain Pulse's post-verdict motion.

4 As this Court previously found, Pulse failed to file a pre-verdict Rule 50(a) Motion on  
5 obviousness, and therefore waived its right to challenge the jury's factual findings on  
6 obviousness for substantial evidence. (Order (Doc. #522) at 4.) The Court must presume  
7 that the jury resolved all factual disputes in Halo's favor, as the Court did in its previous  
8 Order that contained the Court's Findings of Fact and Conclusions of Law. (Id.) Even if  
9 the Court disregards Pulse's engineer's statement that he did not see why the Western  
10 Electric and Rockwell parts were relevant to Pulse's accused parts, Pulse still has not  
11 proven by clear and convincing evidence that the asserted claims are invalid for  
12 obviousness. (Id. at 6.) The Court reaffirms its previous Order which held that Pulse had  
13 not proven by clear and convincing evidence that the asserted patent claims are invalid for  
14 obviousness. (Id. at 2-11.) The Court therefore denies Pulse's Motion for Judgment as a  
15 Matter of Law on obviousness.

16 **B. Infringement of the Asserted Claims with a "Standoff" Element**

17 Pulse argues that under the Court's construction of the "standoff" element, Halo  
18 failed to prove that the standoff limitation in Claim 7 of United States Patent No. 5,656,985  
19 (the '985 Patent) and Claim 48 of United States Patent No. 6,344,785 (the '785 Patent) is  
20 met by any of the accused products. Pulse argues that Halo's expert applied Halo's  
21 proposed construction of standoff which the Court rejected during claim construction.  
22 Pulse thus concludes no reasonable jury could find that the standoff limitation was present  
23 in the accused products because Halo's expert did not apply the correct construction and  
24 thus failed to provide evidence that the standoff limitation was present in Pulse's accused  
25 products.

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1 Halo responds that the jury's finding that the accused products infringe the claims  
2 which contain a standoff element is supported by substantial evidence, including Halo's  
3 infringement expert's testimony. Halo argues its infringement expert testified that he was  
4 applying the Court's standoff construction and testified that each of the accused product  
5 groups had an element which met the Court's standoff construction.

6 Pulse replies that even if Halo's expert occasionally applied the correct construction of  
7 standoff, at other times Halo's expert applied an improper legal construction for standoff.  
8 Pulse thus argues Halo's expert's contradictory testimony caused the jury to reach the  
9 unreasonable and improper conclusion that Pulse's products infringe the standoff claims.

10 In its claim construction Order, the Court construed standoff to mean "a portion of the  
11 package designed to rest in contact with the printed circuit board after mounting in order to  
12 prevent the solder posts from contacting the printed circuit board." (Order (Doc. #194)  
13 at 20.) At trial the Court instructed the jury of the Court's standoff construction. (Jury  
14 Instruction (Doc. #470) at 13.) Halo's expert testified that he was applying the Court's  
15 standoff construction. (Jury Trial Tr. - Day 3 (Doc. #440) at 129.) Halo's expert testified  
16 that his interpretation of the Court's standoff construction was that the standoff does not  
17 have to rest in contact with the circuit board upon mounting. (Jury Trial Tr. - Day 4 (Doc.  
18 #442) at 62-63.)

19 When addressing Pulse's infringement of the asserted patent claims that contain a  
20 standoff element, Halo's expert testified that the end wall present in the H0022 part met the  
21 standoff requirement of the '985 Patent Claim 7. (Jury Trial Tr. - Day 3 at 129-32.) The  
22 expert identified the H0022 part's end wall as "I" on Plaintiff's Trial Exhibit B1. (Id. at  
23 129-30.) Halo's expert also explained how the standoff element was satisfied by the H0022  
24 part's end wall, stating:

25 Well, you can see -- we used the center cross section header because that gives us  
26 a good cross section view, a sideways view of what happens. And if I am  
inserting this into -- onto the surface of the printed circuit board or the pick and

1 place machine, as it presses down you'll notice that these gull wings actually  
2 come slightly lower than that end wall. But as it presses down these gull wings  
3 can bend. They're real flexible on the end wall. And so it's designed so that if  
4 something comes into contact other than the gull wing leads, then it would be the  
end wall that nothing else in the package will come in contact with it. So the  
contents of the package are protected by the safeguard. That's why we call it a  
safeguard.

5 (Id. at 132.) Halo's expert also more summarily testified the H0022 part's end wall fulfilled  
6 the '785 Patent Claim 48's standoff element. (Id. at 148-50.)

7 Halo's infringement expert further identified a standoff in each remaining  
8 representative accused part and summarily testified that each of remaining representative  
9 accused products met the standoff limitations for the '985 Patent Claim 7 and the '785  
10 Patent Claim 48. (Pl.'s Trial Exs. B1-B8; Jury Trial Tr. - Day 3 at 166-67 (H1260 product  
11 group regarding '985 Patent Claim 7), 176-78 (H1260 product group regarding '785 Patent  
12 Claim 48), 189-91 (H1174 product group regarding '985 Patent Claim 7), 201-04 (H1174  
13 product group regarding '785 Patent Claim 48), 215-17 (H1305 product group regarding  
14 '985 Patent Claim 7), 226-28 (H1305 product group regarding '785 Patent Claim 48), 233-34  
15 (H0026 product group regarding '985 Patent Claim 7), 241-43 (H0026 product group  
16 regarding '785 Patent Claim 48), 250 (H0019 product group regarding '985 Patent Claim  
17 7), 257-59 (H0019 product group regarding '785 Patent Claim 48), 166-67 (H0009 product  
18 group regarding '985 Patent Claim 7).)

19 On redirect, Halo's expert testified that the end walls in the accused representative  
20 parts met the standoff element because:

21 that's the way it satisfies the function of preventing the solder posts from  
22 contacting the printed circuit board. So if on insertion the leads flex sufficiently  
23 that they come in contact with other parts of the package, which they do on  
occasion, not on every time, then that would be prevented by the standoff. That's  
its purpose and it's perfectly clear to me that it's designed to do that.

24 (Jury Trial Tr. - Day 4 at 128-29.) Halo also presented at trial drawings of the  
25 representative accused parts which show that the end walls of the accused representative  
26 parts extend below the pins. (Pl.'s Trial Exs. 165-69, 171, 174-79, 183-84, 197, 314.)

1 The Court must consider all of the evidence in the light most favorable to Halo and  
2 disregard any evidence unfavorable to Halo that the jury was not required to consider to  
3 find infringement of the claims which have standoff limitations. Wallace, 479 F.3d at 624.  
4 The standoff construction provided to the jury in the jury instructions did not expressly  
5 require that the end wall must permanently rest upon the printed circuit board upon  
6 mounting the part. Therefore, Halo's expert's opinion that under his interpretation of the  
7 Court's construction the representative accused parts contained a standoff provided  
8 adequate evidence for the jury to find Pulse's representative parts infringed the claims with  
9 a standoff element.

10 Therefore, substantial evidence supported the jury's verdict finding the accused parts  
11 infringed the claims which have a standoff element. The Court therefore denies Pulse's  
12 Renewed Motion for Judgment as a Matter of Law on the issue of Pulse's infringement of  
13 the '985 the Patent Claim 7 and the '785 Patent Claim 48.

### 14 **C. Induced Infringement**

15 Pulse argues it had a good-faith belief that the asserted patents were invalid. Pulse  
16 argues that the Court's finding of no objective willfulness as a matter of law supports  
17 Pulse's good-faith belief that the Halo patents were invalid. Pulse thus concludes that it did  
18 not have knowledge that its actions induced infringement and it therefore did not induce  
19 infringement as a matter of law.

20 Halo responds that the jury was properly instructed that it could not find inducement if  
21 it found Pulse believed the patents were invalid, and therefore the jury's verdict that Pulse  
22 induced infringement shows the jury did not believe Pulse's witnesses, and found that Pulse  
23 subjectively did not believe the patents were invalid. Halo further contends there was  
24 sufficient evidence presented at trial to support the jury's induced infringement findings.  
25 Halo also argues that the Court's finding that the objective prong of willfulness was not met  
26 has no impact on the jury's verdict regarding Pulse's subjective intent because the state of



1 mind of the infringer is not relevant to the objective prong for willfulness.

2 The only element of induced infringement at issue is whether Halo proved that Pulse  
3 had the requisite knowledge that its actions induced infringement. For induced  
4 infringement, “the accused infringer must have knowingly and intentionally induced  
5 another party’s direct infringement.” Merial Ltd. v. Cipla Ltd., 681 F.3d 1283, 1304 (Fed.  
6 Cir. 2012). Thus, a finding of inducement requires both knowledge of the existence of the  
7 patent and “knowledge that the induced acts constitute patent infringement.” Commil USA,  
8 LLC v. Cisco Sys., Inc., --- F.3d ----, 2013 WL 3185535, at \*4 (Fed. Cir. 2013) (citing  
9 Global-Tech Appliances, Inc. v. SEB S.A., 131 S.Ct. 2060, 2068 (2011)). The knowledge  
10 requirement may be shown by actual knowledge or willful blindness. Commil USA, 2013  
11 WL 3185535, at \*3. “Circumstantial evidence can, of course, support a finding of actual  
12 knowledge or willful blindness.” Id. Willful blindness is met if the infringer subjectively  
13 believed there was a high probability that its actions were inducing infringement by a third  
14 party and the infringer took deliberate actions to avoid learning of whether it was inducing  
15 infringement. Global-Tech, 131 S.Ct. at 2071-72.

16 “[A] good-faith belief of invalidity is evidence that may negate the specific intent to  
17 encourage another’s infringement, which is required for induced infringement.” Commil  
18 USA, 2013 WL 3185535, at \*5. However, evidence of a good-faith invalidity belief does  
19 not preclude a finding of induced infringement. Id. at \*6.

20 Here, taking the evidence in the light most favorable to Halo, substantial evidence  
21 supported the jury’s finding, implied in its verdict, that Pulse had the requisite knowledge to  
22 be liable for induced infringement. The jury was instructed that to find Pulse induced  
23 infringement, Pulse must “[h]ave known that the third party’s acts it was causing were  
24 infringing.” (Jury Instructions (Doc. #470) at 17.) The jury also was instructed that:

25 If Pulse did not know . . . the third party’s acts it was causing were infringing, it  
26 cannot be liable for inducement unless it actually believed that it was highly  
probable its actions would encourage infringement by a third party of a patent

1 and it took intentional acts to avoid learning the truth. An act to avoid learning  
2 the truth is intentional if Pulse was presented with facts that it was particularly  
3 likely that Pulse was inducing infringement, and yet Pulse intentionally failed to  
investigate those facts. It is not enough that Pulse was merely indifferent to the  
possibility that it might encourage infringement of a patent.

4 If you find that Pulse was aware of the patents, but believed that the acts it  
5 encouraged did not infringe the patents, or that the patents were invalid, Pulse  
cannot be liable for inducement.

6 (Id.) Therefore, the jury was instructed that if Pulse believed the patents were invalid, the  
7 jury could not find Pulse induced infringement. The jury found Pulse induced  
8 infringement, and therefore must have found Pulse did not believe the patents were invalid.  
9 (Jury Verdict (Doc. #482) at 5-8.)

10 The evidence at trial supports the jury's finding. A Pulse employee first learned of the  
11 Halo patents in 1998, and another Pulse employee learned of the Halo patents in 1999.  
12 (Jury Trial Tr. - Day 6 (Doc. #465) at 11-12.) Pulse also cited the Halo patents as prior art  
13 in two Pulse patent applications in 1998 and 2001. (Pl.'s Trial Ex. 151 (citing the '985  
14 Patent); Pl.'s Trial Ex. 446 (citing the '785 Patent).) In 2002, Pulse's president received a  
15 letter from Halo's attorney's about the Halo patents. (Jury Trial Tr. - Day 6 (Doc. #465) at  
16 12; Pl.'s Trial Ex. 91.) Pulse's representative testified at trial that she was "not aware of  
17 any communication that happened or any actions that took place" after Pulse received the  
18 first 2002 letter, until Pulse received a second letter from Halo's attorneys about the Halo  
19 patents in 2002. (Jury Trial Tr. - Day 6 (Doc. #465) at 12-13; Pl.'s Trial Ex. 92.)

20 After Pulse received the second letter, Pulse's president contacted a Pulse engineer  
21 who "did a cursory search of the patent and was skeptical as to its validity based on his  
22 knowledge of prior art that [Pulse] had and his remembering the part that [Pulse] had  
23 developed 30 years ago that he actually was personally involved in doing tests or something  
24 as a young engineer." (Jury Trial Tr. - Day 6 (Doc. #465) at 13.) The engineer that  
25 reviewed the Halo patents testified that he concluded, after approximately two hours of  
26 review and based on review of two of Pulse's prior art parts, that there was no novelty to

1 the Halo patents and that they were invalid. (Id. at 179-80, 196.) The engineer also  
2 testified that he could not say for sure but he thought he communicated his analysis to his  
3 direct supervisor or Pulse's president. (Id. at 179-81.) A Pulse employee also testified that  
4 she was not aware of anyone at Pulse who made a conscious decision that it was  
5 permissible to continue selling the open header surface mount transformer parts after  
6 receiving the second letter in 2002. (Id. at 12-13; Jury Trial Tr. - Day 8 (Doc. #467) at 8.)  
7 Halo also presented evidence that Pulse continued to sell its accused product line from 2002  
8 to 2007, which is when Halo filed the instant suit. (Jury Trial Tr. - Day 6 at 202; Pl.'s Trial  
9 Ex. 380C.)

10 Taking this evidence in the light most favorable to Halo, the evidence presented at trial  
11 supports the jury's implicit finding that Pulse did not believe the Halo patents were invalid  
12 and that Pulse had knowledge that the acts it was inducing were infringing. Pulse gained  
13 knowledge of the Halo patents as early as 1998, and again in 1999. Pulse also named the  
14 Halo patents in Pulse's patent applications, but did not conduct an analysis of whether  
15 Pulse's accused products infringed the patents until sometime after receiving the second  
16 2002 letter. Furthermore, Pulse's engineer conducted a very limited analysis of the Halo  
17 patents and Pulse could not establish that a decision maker at Pulse actually relied upon the  
18 analysis in continuing to sell the accused products. Therefore, the jury reasonably could  
19 have found that Pulse did not believe the patents were invalid, knew its accused products  
20 infringed, and knew its actions were inducing its customers to infringe. See ePlus, Inc. v.  
21 Lawson Software, Inc., 700 F.3d 509, 521 (Fed. Cir. 2012) (affirming the district court's  
22 denial of judgment as a matter of law because the record contained sufficient evidence of  
23 the infringer's intent and knowledge to allow a reasonable jury to conclude that the  
24 infringer induced its customers to infringe).

25 The evidence also supports the finding that Pulse was willfully blind as to whether its  
26 accused products infringed the Halo patents. Pulse knew of the patents since 1998 and did

1 not conduct a limited infringement analysis until 2002. Furthermore, the decision makers at  
2 Pulse did not make a decision based on that infringement analysis. Therefore, the jury  
3 reasonably could have found that Pulse subjectively believed there was a high probability  
4 that its accused products infringed and that Pulse took deliberate actions to avoid learning  
5 of whether its accused products infringed. The jury thus reasonably could have concluded  
6 that Pulse was willfully blind as to whether the actions it was inducing infringed the Halo  
7 patents.

8 The Court's holding that Halo did not prove the objective component of willfulness by  
9 clear and convincing evidence does not affect the jury's verdict finding by a preponderance  
10 of the evidence that Pulse had knowledge that its actions were inducing infringement.  
11 (Order (Doc. #522) at 23-26.) First, willful infringement has a higher burden of proof than  
12 induced infringement. Bard Peripheral Vascular, Inc. v. W.L. Gore & Assoc., Inc., 682  
13 F.3d 1003, 1005 (Fed. Cir. 2012). Second, the Court decided only the objective element of  
14 willful infringement and "[t]he state of mind of the accused infringer is not relevant to this  
15 objective inquiry." In re Seagate Tech., LLC, 497 F.3d 1360, 1371 (Fed. Cir. 2007); (Order  
16 (Doc. #522) at 23-26). Rather, the objective prong is "that the infringer acted despite an  
17 objectively high likelihood that its actions constituted infringement of a valid patent."  
18 Bard, 682 F.3d at 1005. The objective prong "tends not to be met where an accused  
19 infringer relies on a reasonable defense to a charge of infringement." Spine Solutions, Inc.  
20 v. Medtronic Sofamor Danek USA, Inc., 620 F.3d 1305, 1319 (Fed. Cir. 2010). Thus,  
21 although Pulse may have reasonably relied on its invalidity defenses such that Halo did not  
22 prove by clear and convincing evidence that Pulse was objectively reckless, the jury  
23 consistently could find by a preponderance of the evidence that Pulse subjectively did not  
24 believe the patents were invalid.

25 The jury's verdict finding Pulse induced infringement was supported by substantial  
26 evidence. The Court therefore denies Pulse's Renewed Motion for Judgment as a Matter of

1 Law as to induced infringement.

2 **II. MOTION FOR NEW TRIAL (DOC. #534)**

3 Pulse argues multiple grounds exist which require that it receive a new trial. First,  
4 Pulse argues the Court erred during claim construction in construing two claim terms.  
5 Next, Pulse argues the Court erred in its summary judgment rulings, which precluded Pulse  
6 from presenting certain of its invalidity defenses at trial. Pulse also argues the Court erred  
7 in allowing Halo to reference reexamination proceedings during trial. Pulse further  
8 contends the Court erred by rejecting Pulse's proposed jury instruction on invalidity  
9 concerning prior art that was before the PTO. Pulse further argues the Court erred in  
10 admitting the e-mails Halo used to impeach T. K. Luk. Finally, Pulse argues the jury's  
11 determination of each issue that Pulse raised in its Renewed Motion for Judgment was  
12 against the clear weight of the evidence.

13 Halo responds that the Court carefully considered the arguments and evidence  
14 provided by the parties on each issue raised in Pulse's Motion, and the Court's prior rulings  
15 are consistent with the law. Halo thus contends that the Court's previous rulings on the  
16 issues are proper and should not be disturbed.

17 Ninth Circuit law controls whether to grant a motion for new trial because a motion for  
18 new trial is a procedural issue not unique to patent law. Union Carbide Chem. & Plastics  
19 Tech. Corp. v. Shell Oil Co., 308 F.3d 1167, 1182 (Fed. Cir. 2002). Whether to grant a  
20 motion for new trial lies within the district court's discretion. Shimko v. Guenther, 505  
21 F.3d 987, 990 (9th Cir. 2007). Under Federal Rule of Civil Procedure 59, the Court may  
22 "grant a new trial on all or some of the issues . . . for any reason for which a new trial has  
23 heretofore been granted in an action at law in federal court." The Ninth Circuit has  
24 instructed that "[t]he trial court may grant a new trial only if the verdict is contrary to the  
25 clear weight of the evidence, is based upon false or perjurious evidence, or to prevent a  
26 miscarriage of justice." Shimko, 505 F.3d at 993 (quotation omitted).

1 Furthermore, district courts are granted broad discretion in admitting evidence, and  
2 “[a] new trial is only warranted when an erroneous evidentiary ruling substantially  
3 prejudiced a party.” Harper v. City of L.A., 533 F.3d 1010, 1030 (9th Cir. 2008) (quotation  
4 omitted). Substantial prejudice exists if it is more probable than not that the erroneous  
5 evidential ruling tainted the verdict. Id.

#### 6 **A. The Court’s Claim Constructions**

7 Pulse argues the Court improperly held “electronic surface mount package” in the  
8 preamble of all of the asserted patent claims was not limiting. Pulse argues that it did not  
9 oppose Halo’s Motion in Limine No. 3 because of the Court’s erroneous claim construction,  
10 and therefore Pulse was prejudiced by not being able to present evidence and prove at trial  
11 that the “electronic surface mount package” limitation is not met by each of the accused  
12 products.

13 Pulse also argues the Court improperly construed the term “contour element” for  
14 Pulse’s United States Patent No. 6,116,963 (the ‘963 Patent) and that due to this erroneous  
15 construction Pulse stipulated to summary judgment of non-infringement on Pulse’s  
16 counterclaim against Halo. Thus, Pulse argues it was improperly prevented from presenting  
17 its counterclaim at trial.

18 Halo responds that Pulse has presented no new reason why Pulse’s proposed  
19 constructions are correct and merely relies on its prior briefs. Halo argues the Court’s  
20 construction of these terms was correct, and the Court should adhere to its prior  
21 constructions.

22 The Court already has considered the parties’ arguments regarding the construction for  
23 the disputed claim terms. The Court did not err in holding the preamble phrase “electronic  
24 surface mount package” does not limit the Halo patent claims because “the  
25 claim describes a structurally complete invention in the claim body, and there was no  
26 express disclaimer in the prosecution history that limited the present invention” to Pulse’s

1 proposed construction. (Order (Doc. #194) at 13-16.) The Court did not err in rejecting  
2 Pulse's proposed construction of "contour element" as too broad to be sufficiently  
3 descriptive and finding the contour element means "a raised or recessed feature that  
4 physically contacts the bend of an electrical lead both before and after the modular plug is  
5 inserted into the cavity." (*Id.* at 12-13.) The Court therefore denies Pulse's Motion for a  
6 New Trial on the basis of the Court's claim constructions.

### 7 **B. The Court's Summary Judgment Rulings**

8 Pulse argues the Court improperly granted summary judgment on Pulse's invalidity  
9 claim under 35 U.S.C. § 102(b) by finding there was no genuine issue of material fact that  
10 Halo's August 1994 sale of products embodying the claimed inventions were for  
11 experimental purposes, rather than commercial purposes. Pulse argues it at least should  
12 have been permitted to present its § 102(b) defense to the jury.

13 Pulse also argues the Court erred in its summary judgment Order by modifying the  
14 parties' stipulation regarding the accused products to take out the PE-64309 part. Pulse  
15 argues Halo made a voluntary and informed decision to accuse that part of infringement,  
16 and it was not an error or mistake. Pulse argues the Court's amendment improperly  
17 precluded Pulse from being able to argue at trial that Halo's accusation that the part  
18 infringed renders the asserted patent claims invalid as a matter of law.

19 Halo responds that there was no error in the pretrial rulings challenged by Pulse. Halo  
20 argues Pulse does not present any new arguments on these issues, and the Court's prior  
21 rulings on these issues are proper and should be upheld.

22 The Court already has considered the parties' arguments regarding the Court's  
23 summary judgment rulings. As to Pulse's invalidity defense under § 102(b), the Court  
24 previously found that Pulse presented no evidence creating a genuine issue of material fact  
25 that Halo's August 1994 sale was for experimental purposes and not commercial purposes.  
26 (Order (Doc. #300) at 25-30.) The Court therefore granted summary judgment of no



1 invalidity based on the August 1994 sale, and Pulse was not improperly prejudiced by not  
2 being able to present evidence at trial of its invalidity defense under § 102(b). (*Id.* at 30.)

3 As to the Court amending the parties' stipulation regarding the accused products to  
4 take out the PE-64309 part, the Court previously found it was in the interests of justice to  
5 strike Pulse's argument that Halo's allegations that the PE-64309 part infringes the Halo  
6 patents demonstrates that the Halo patents are invalid as a matter of law. (*Id.* at 50.) The  
7 Court also found it was in the interests of justice to remove the PE-64309 part from the  
8 accused product list. (*Id.*) The Court further found these rulings did not "unfairly prejudice  
9 Pulse because Pulse still will be able to argue that the PE-64309 reads on all of the Asserted  
10 Halo Claims and thus the Halo Patents are invalid." (*Id.*) The Court finds no error in its  
11 summary judgment rulings, and therefore denies Pulse's Motion for a New Trial based on  
12 the Court's summary judgment rulings.

### 13 **C. Pulse's Proposed Jury Instruction on the Prior Art Before the PTO**

14 Pulse argues it was error for the Court not to include Pulse's proposed jury instruction  
15 regarding validity that "[p]rior art that differs from the prior art considered by the PTO may  
16 carry more weight than the prior art that was considered and may make Pulse's burden of  
17 showing that it is highly probable that a patent claim is invalid easier to sustain." Pulse  
18 argues the Supreme Court's decision in Microsoft Corp. v. i4i Ltd. P'ship, 131 S.Ct. 2238  
19 (2011), mandates this instruction. Pulse further argues that the fact that the PTO did not  
20 consider key asserted prior art references was significant to Pulse proving invalidity and it  
21 was prejudicial error for the Court not to include its proposed instruction.

22 Halo responds that the Court's instruction on this issue was a compromise between  
23 what each of the parties requested and was fair and proper. Halo also argues that the  
24 Supreme Court in Microsoft did not mandate Pulse's proposed construction, but rather  
25 stated that courts may instruct the jury as such, but that it was not required. Halo contends  
26 the Court's instruction gave the admonitions suggested by the Supreme Court. Halo finally



1 argues that the decision not to include the sentence Pulse offered would not have had any  
2 effect on the verdict given the evidence presented at trial and the instructions that were  
3 given, and therefore Pulse was not prejudiced.

4 Pulse replies that although the Court's instruction contains correct statements, it does  
5 not contain a complete statement of how the jury should evaluate the prior art that was not  
6 before the PTO. Pulse contends that its requested sentence was an accurate representation  
7 of a Supreme Court holding and therefore should have been included.

8 In Microsoft, the Supreme Court stated "that new evidence supporting an invalidity  
9 defense may carry more weight in an infringement action than evidence previously  
10 considered by the PTO." 131 S.Ct. at 2251 (quotation omitted). The Supreme Court  
11 further stated:

12 if the PTO did not have all material facts before it, its considered judgment may  
13 lose significant force. And, concomitantly, the challenger's burden to persuade  
14 the jury of its invalidity defense by clear and convincing evidence may be easier  
15 to sustain. In this respect, although we have no occasion to endorse any  
16 particular formulation, we note that a jury instruction on the effect of new  
17 evidence can, and when requested, most often should be given. When warranted,  
18 the jury may be instructed to consider that it has heard evidence that the PTO had  
no opportunity to evaluate before granting the patent. When it is disputed  
whether the evidence presented to the jury differs from that evaluated by the  
PTO, the jury may be instructed to consider that question. In either case, the jury  
may be instructed to evaluate whether the evidence before it is materially new,  
and if so, to consider that fact when determining whether an invalidity defense  
has been proved by clear and convincing evidence.

19 Id. (internal citation omitted). Therefore, Microsoft does not require that Pulse's proposed  
20 instruction be given. Rather, in Microsoft the Supreme Court provided guidance as to how  
21 to instruct a jury concerning prior art not that was not before the PTO but which has been  
22 presented to the jury at trial.

23 Here, the parties disputed whether the prior art Pulse presented at trial materially  
24 differed from the prior art evaluated by the PTO. The Court instructed the jury that Pulse  
25 had introduced at trial prior art not considered by the PTO during examination of the Halo  
26 patents. (Jury Instructions (Doc. #470) at 19.) The Court further instructed the jury that

1 “Pulse contends that such prior art invalidates certain claims of the Halo patents.” (Id.)  
2 The Court finally instructed the jury that the jury “may take into account the fact that the  
3 PTO did not consider the prior art when it issued the Halo patents” and “also may take into  
4 account any differences or similarities between the prior art that the PTO did not consider  
5 and the prior art that the PTO did consider.” (Id.) The Court’s instruction incorporated the  
6 Supreme Court’s guidance set out in Microsoft that the jury should be alerted to the fact that  
7 it has heard evidence that was not before the PTO and should consider whether the new  
8 evidence is different from that which was before the PTO.

9 It was not a manifest injustice to not include Pulse’s proposed jury instruction  
10 regarding the prior art and a new trial is not warranted on this basis. The Court therefore  
11 denies Pulse’s Motion for a New Trial due to the Court’s rejection of Pulse’s proposed jury  
12 instruction regarding the prior art.

#### 13 **D. Reexamination Evidence Admitted at Trial**

14 Pulse argues the Court erred in allowing evidence of the asserted patent’s  
15 reexamination, which resulted in jury confusion and prejudice to Pulse. Pulse argues Halo  
16 referenced the reexamination several times during trial in an attempt to mislead the jury to  
17 believe that the Halo patents were entitled to a higher presumption of validity, which the  
18 Federal Circuit has held is improper. Pulse argues that Halo’s references to the  
19 reexamination led to jury confusion here, which is evidenced by the jury asking why Pulse  
20 did not present evidence to the PTO during reexamination.

21 Halo responds that it was inevitable that some discussion of the reexamination would  
22 occur because some of the asserted claims were added during reexamination and are  
23 reflected on the reexamination certificates that came into evidence without Pulse objecting.  
24 Halo further argues that Pulse made separate damages arguments on those claims which  
25 came in during reexamination, so it would have been impossible to preclude mention of the  
26 reexamination. Halo also contends it was fair and relevant to allow Halo to tell the jury

1 what the PTO did consider because Pulse's obviousness argument throughout trial was that  
2 the PTO did not consider the prior art presented by Pulse at trial. Halo finally argues that  
3 even if the Court's admission of evidence of the reexamination was error, it was not  
4 prejudicial because the jury heard balanced testimony about the reexamination process,  
5 what the PTO could consider, and what the PTO did consider.

6 Pulse replies that substantive discussion of the reexamination process was not  
7 inevitable because the jury could have been instructed that the claims in the reexamination  
8 certificate should be treated as though issued as original patent claims. Pulse further argues  
9 that the fact that the PTO never considered the prior art presented by Pulse at trial could  
10 have been given to the jury without a detailed discussion of the reexamination process.  
11 Pulse further argues that although a patentee may be able to present to the jury the fact that  
12 a reexamination has been completed and may discuss the PTO's specific reasoning in  
13 issuing the reexamination certificate, Halo went beyond that and told the jury that  
14 reexaminations are unusual and three examiners considered the claims and found them  
15 valid. Pulse argues the prejudice it suffered is demonstrated by the jury's question asking  
16 why Pulse did not submit its own evidence to the PTO during the reexamination. Pulse  
17 submits this jury question prompted additional evidence including expert testimony, as well  
18 as attorney argument, which gave the jury the impression that the reexamination  
19 strengthened the asserted claims.

20 In the context of admitting evidence of non-final reexamination proceedings, the  
21 Federal Circuit has explained that "[i]t is generally true that evidence of non-final  
22 reexamination determinations is of little relevance and presents a risk of jury confusion."  
23 K-TEC, Inc. v. Vita-Mix Corp., 696 F.3d 1364, 1376 (Fed. Cir. 2012). However, the  
24 Federal Circuit recognizes that "it is the province of the district court to weigh those  
25 interests and determine admissibility in each case, a decision about which the court has very  
26 broad discretion." Id. Thus, admitting evidence of a patent reexamination is governed by

1 the balancing test in Federal Rule of Evidence 403, that the court may exclude relevant  
2 evidence if its probative value is substantially outweighed by unfair prejudice, confusion, or  
3 potential to mislead the jury. See K-TEC, 696 F.3d at 1376 (finding no abuse of discretion  
4 when the court applied Rule 403 and “the court explained the status of the reexamination  
5 proceedings to the jury and, if anything, cured any potential unfair prejudice to [the alleged  
6 infringer] by informing the jury that the PTO’s consideration of [the prior art] in the  
7 reexaminations proceedings ha[d] really no value.” (quotation omitted)); see also SynQor,  
8 Inc., 709 F.3d at 1380 (finding district court did not abuse its discretion by excluding  
9 evidence that before trial the PTO had granted reexamination and had issued first rejections  
10 of the asserted claims because the reexamination evidence would have been confusing and  
11 more prejudicial than probative); Callaway Golf Co. v. Acushnet Co., 576 F.3d 1331, 1342-  
12 43 (Fed. Cir. 2009) (similar finding).

13 Here, the Court did not err in allowing evidence of the PTO’s reexamination of the  
14 Halo patents because the probative value of the evidence presented concerning the Halo  
15 patents’ reexamination was not outweighed by the potential prejudice to Pulse. In its brief  
16 regarding jury instructions, Pulse argued the Court should not allow Halo to present  
17 evidence that the asserted claims had survived reexamination because this could improperly  
18 suggest to the jury that the asserted claims are entitled to an extra presumption of validity.  
19 (Def.’s Br. in Support of Their Proposed Jury Instructions (Doc. #404) at 8-9.) At the  
20 beginning of trial, before the jury was selected, the parties again raised the dispute over  
21 Halo referencing the reexamination during opening argument. (Jury Selection - Day 1  
22 (Doc. #433) at 5-7.) Halo’s counsel represented that he intended to state the patents went  
23 “through a reexamination process where issues about their validity were raised and  
24 considered and the Patent Office re-issued the patents after a year-and-a-half of study.” (Id.  
25 at 6.) The Court stated it would allow Halo’s counsel to state the facts in opening, as long  
26 as there was not argument about what the reexamination proved. (Id. at 7.) During opening

1 arguments, Halo's counsel stated the Halo patents "were examined when they were first  
2 issued and then reexamined in 2008." (Jury Trial Tr. - Day 1 (Doc. #434) at 54.) Thus,  
3 during the opening, the probative value of Halo representing the uncontested facts of the  
4 case during opening was not outweighed by any prejudice to Pulse.

5 During the direct examination of Halo's first witness, one of the Halo patents'  
6 inventors, Halo's counsel brought up the fact that a different party which Halo had sued for  
7 infringement had asked the PTO to reexamine the Halo patents. (Jury Trial Tr. - Day 2  
8 (Doc. #435) at 95.) Pulse objected to Halo's counsel asking the witness about his  
9 understanding of patent reexamination. (*Id.*) The Court overruled this objection, stating  
10 that the Court would allow the witness to give his understanding of the reexamination  
11 process and that this witness's testimony was "not to be confused by the jury as some kind  
12 of legal explanation." (*Id.*) The witness then testified that his understanding of the  
13 reexamination process was that it is "another review of a patent that's already been issued,  
14 but with other prior art that may or may not have been considered in the first review of the  
15 original patent." (*Id.* at 96.) The witness also testified that he was involved in the  
16 reexamination process for the Halo patents, that he met with the PTO examiner, provided  
17 information to the examiner, and that the process took about eighteen months. (*Id.* at 97.)  
18 The witness further testified that the result was "[t]hey came back and reaffirmed the  
19 validity of our patents and we were actually able to add some additional claims as well."  
20 (*Id.*) Thus, Halo's witness explained what happened upon reexamination and why there  
21 were additional claims added upon reexamination. Additionally, the reexamination  
22 certificates which reflect the additional claims added were admitted at trial and given to the  
23 jury during deliberation. (Pl.'s Trial Exs. 1 ('985 Patent Claim 16), 5 ('785 Patent Claims  
24 40 and 48).) The probative value of these facts combined with the Court's admonition to  
25 the jury to not construe the testimony as a legal explanation was not outweighed by any  
26 prejudice to Pulse.

1 On cross-examination of Halo's first witness, Pulse's counsel questioned the witness  
 2 about the Halo patents' reexamination. (Jury Trial Tr. - Day 2 (Doc. #435) at 111-13, 155-  
 3 57.) The witness testified that the Western Electric and Rockwell parts, which Pulse relied  
 4 on during the trial as prior art that rendered the asserted patent claims obvious, were not  
 5 submitted to the PTO during reexamination. (*Id.* at 112-13.) After Halo rested its case-in-  
 6 chief and Pulse presented its first three witnesses, one of the jurors provided the Court with  
 7 a note stating "[i]f Pulse had paperwork/drawings that would prove or help prove patents in  
 8 question possible invalidity, why did they not provide documents to patent office when  
 9 patent reviewed the second time for validity??" (Jury Notes (Doc. #447); Jury Trial Tr. -  
 10 Day 6 (Doc. #465) at 283-92.)<sup>1</sup> To address this jury question, the Court instructed the jury  
 11 that "the PTO is prohibited by law from considering prior art other than 'patents of printed  
 12 publications,' . . . when evaluating the validity of a patent in reexamination" and that the  
 13 "Rockwell, Western Electric, and Valor drawings and related documents Pulse has  
 14 presented in this case are not 'patents or printed publications.'" (Jury Instructions (Doc.  
 15 #470) at 21; Jury Trial Tr. - Day 9 (Doc. #468) at 11-16, 152-69.) "Jurors are presumed to  
 16 have followed the instructions they were given." *Finjan, Inc. v. Secure Computing Corp.*,  
 17 626 F.3d 1197, 1208-09 (Fed. Cir. 2010). The Court's instruction thus cured any potential  
 18 unfair prejudice to Pulse. *K-TEC*, 696 F.3d at 1376.

19 Finally, concerning Halo's patent reexamination expert, Halo's counsel argued in  
 20 closing argument that:

21 Only one party brought you anyone to talk about the reexamination and that was  
 22 Halo brought you Mr. Godici. What did he tell you? Well, he's a very expert  
 23 guy. His name -- his name's on one of the patents in this case. And he told you  
 24 that, you know, this reexamination process is pretty unusual. Most patents don't  
 go through it, but when they do go through it it's performed by special  
 examiners, people that are specially qualified to review it. And it's not just one

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25 <sup>1</sup> The Jury Note at Doc. #447 is currently filed under seal. The Court finds no good cause for  
 26 this jury note to remain under seal. The Court therefore orders that the Clerk's Office unseal Jury Note  
 (Doc. #447).

1 examiner, it's three examiners. And they must consider, must consider the  
2 secondary considerations, that is, all those factors that the Court laid out for you.

3 (Jury Trial Tr. - Day 10 (Doc.#479) at 220.) However, the Court instructed the jury before  
4 closing arguments, and each juror was given a copy of the jury instructions during  
5 deliberation. As explained previously, the instructions inform the jury to take into  
6 consideration the prior art which was not before the PTO in determining whether the  
7 asserted patent claims were invalid. (Jury Instructions (Doc. #470) at 19.) Also as  
8 explained previously, the instructions stated that the prior art parts presented by Pulse could  
9 not have been presented to the PTO upon reexamination. (Id. at 21.) Therefore, any  
10 potential prejudice to Pulse from Halo's closing argument was cured by the jury  
11 instructions.

12 Even if Pulse was prejudiced by Halo's counsel's statement during closing argument,  
13 the Court previously found that Pulse did not prove by clear and convincing evidence that  
14 the asserted patent claims were obvious. (Order (Doc. #522) at 2-11.) Therefore, Pulse has  
15 not shown that Halo's closing argument more probably than not tainted the verdict on  
16 obviousness such that a new trial is warranted.

17 In summary, the Court finds that the probative value of the reexamination evidence  
18 presented at trial was not outweighed by the potential prejudice to Pulse. Furthermore, the  
19 Court's instructions during trial and at the close of evidence cured the potential prejudice to  
20 Pulse. Moreover, to the extent the Court's admission of the reexamination evidence was  
21 erroneous, Pulse has not shown it was substantially prejudiced, or that it is more probable  
22 than not that the erroneous evidential ruling tainted the verdict such that a new trial is  
23 warranted. The Court therefore denies Pulse's Motion for a New Trial on the basis of the  
24 reexamination evidence presented at trial.

25 ///

26 ///



**E. The T.K. Luk Emails and Pulse's Inventorship Defense**

Pulse argues the Court erred in denying Pulse's motion to exclude two e-mails, marked Plaintiff's Trial Exhibits 413 and 414. Pulse argues the e-mails were unauthenticated and unsponsored. Pulse further argues that although Halo argued the e-mails could be used to show T.K. Luk's ("Luk") bias, Halo actually used the e-mails to impeach Luk, an unavailable witness. Pulse contends it was prejudicial error under Federal Rules of Evidence 608(b) and 806 for the Court to allow the e-mails to be used to impeach. Pulse also argues the Court erred in allowing physical copies of the e-mails to be sent to the jury room. Pulse finally argues the jury's rejection of Pulse's improper inventorship defense is not supported by the evidence because Pulse proved by clear and convincing evidence that Halo failed to name Luk as an inventor.

Halo responds that Halo previously explained in responding to Pulse's initial Motion in Limine that the e-mails were authenticated by Luk's employer during his deposition in the case in which the e-mails arose. Halo further contends that Pulse waived its authentication objection by not renewing it at trial. Halo further argues that even if Pulse did not waive its authentication objection, there was evidence in the record to support the e-mails' authenticity. Halo further argues that its argument that the e-mails showed bias was not a pretext to admit the e-mails for the purpose of showing untruthfulness because Halo prefaced its closing argument about the e-mails by referencing the Court's limiting instructions and saying the e-mails were only being used to show bias. Halo further submits that the Court properly exercised its discretion in sending the Luk e-mails back to the jury and Pulse has failed to show prejudicial error that would warrant a new trial. Halo finally argues that the jury's verdict finding Pulse did not prove its inventorship invalidity defense is supported by the weight of the evidence.

Pulse replies that it already raised its objection as to the authenticity of the e-mails in pre-trial motions and therefore did not waive its objection by not objecting at trial. Pulse



1 further asserts that the Court's admission of the e-mails and sending copies back with the  
2 jury prejudiced Pulse's inventorship defense such that a new trial is warranted because  
3 whether Luk was an inventor came down to a credibility decision.

4 The Court already has found that Pulse did not prove by clear and convincing  
5 evidence, or even by a preponderance of the evidence, that Luk was an inventor of Halo's  
6 patented design. (Order (Doc. #522) at 14-16.) Although in its previous Order the Court  
7 recognized the e-mails as evidence of Luk's bias against Halo, even if the e-mails were not  
8 considered, Pulse has not proven by clear and convincing evidence that Luk was an  
9 inventor that should have been named because his testimony was not corroborated and the  
10 bulk of the evidence showed Luk was not an inventor. (*Id.*) Thus, even assuming it was  
11 error to admit the e-mails for the purpose of showing Luk's bias, or even for the purpose of  
12 impeaching Luk's character for truthfulness, the error did not substantially prejudice Pulse.  
13 Harper, 533 F.3d at 1030.

14 Similarly, the jury's verdict finding Pulse had not proven its inventorship invalidity  
15 defense was not against the clear weight of the evidence because Pulse did not prove Luk  
16 was an inventor by clear and convincing evidence, or by a preponderance of the evidence.  
17 (*Id.*) The Court therefore denies Pulse's Motion for a New Trial on the basis of the e-mails  
18 admitted to show Luk's bias and on the basis that the jury's verdict on Pulse's inventorship  
19 invalidity defense was against the weight of the evidence.

#### 20 **F. Pulse's Remaining Challenges to the Jury's Verdict**

21 Pulse argues the jury verdict was against the weight of the evidence in various  
22 respects. First, Pulse argues the jury's finding that the asserted claims were not obvious is  
23 not supported because Pulse proved obviousness by clear and convincing evidence. Pulse  
24 also argues the evidence showed its accused products do not have a standoff element and  
25 therefore do not satisfy the elements of the asserted claims. Pulse finally argues there is  
26 insufficient evidence of induced infringement.

1 The Court, in its Findings of Fact and Conclusions of Law, and in deciding Pulse's  
2 Renewed Motion for Judgment as a Matter of Law, already has found Pulse had not proven  
3 by clear and convincing evidence that the asserted patent claims were obvious. (Order  
4 (Doc. #522) at 2-11.) The Court also has found in this Order that the jury's verdict finding  
5 Pulse infringed the claims with standoff elements and Pulse induced infringement was  
6 supported by substantial evidence, and the clear weight of the evidence does not mandate  
7 otherwise. Therefore, the Court denies Pulse's Motion for a New Trial on the basis that the  
8 jury's findings on obviousness, infringement of the claims with standoff elements, and  
9 induced infringement are against the weight of the evidence.

### 10 **III. CONCLUSION**

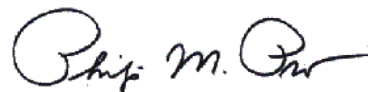
11 **IT IS THEREFORE ORDERED** that Defendants Pulse Electronics, Inc. and Pulse  
12 Electronics Corporation's Renewed Motion for Judgment as a Matter of Law (Doc. #535) is  
13 hereby **DENIED**.

14 **IT IS FURTHER ORDERED** that Defendants Pulse Electronics, Inc. and Pulse  
15 Electronics Corporation's Motion for a New Trial (Doc. #534) is hereby **DENIED**.

16 **IT IS FURTHER ORDERED** that the Clerk's Office shall unseal Jury Note (Doc.  
17 #447).

18 **IT IS FURTHER ORDERED** that the stay on the execution of Judgment granted in  
19 the Court's Order dated July 16, 2013 (Doc. #551) is hereby lifted.

20  
21 DATED: August 16, 2013



22  
23 PHILIP M. PRO  
United States District Judge